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State/Territory: New York

Citation 4.35 Remedies for Nursing Facilities that Do Not Meet Requirements of Participation

1919(h)(1) and  
(2) of the Act,  
P.L. 100-203  
(Sec. 4213(a))

(a) The Medicaid agency meets the requirements of section 1919(h)(2)(A) through (D) of the Act concerning remedies for nursing facilities that do not meet one or more requirements of participation. ATTACHMENT 4.35-A describes the criteria for applying the remedies specified in section 1919(h)(2)(A)(i) through (iv) of the Act.



(b) The agency uses the following remedy(ies):

- 1) Denial of payment of new admissions.  
(Direct)
- 2) Civil money penalty (Alternative)
- 3) Appointment of temporary management.  
(Alternative)
- 4) In emergency cases, closure of the facility and/or transfer of residents.  
(Direct)

1919(h)(2)(B)(ii)  
of the Act



(c) The agency establishes alternative State remedies to the specified Federal remedies (except for termination of participation). ATTACHMENT 4.35-B describes these alternative remedies and specifies the basis for their use.

1919(h)(2)(F) of  
the Act



(d) The agency uses one of the following incentive programs to reward nursing facilities that furnish the highest quality care to Medicaid residents:



1) Public recognition.



2) Incentive payments.

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State/Territory: New York State

Citation4.35 Enforcement of Compliance for Nursing Facilities

42 CFR  
§488.402(f)

(a) Notification of Enforcement Remedies

When taking an enforcement action against a non-State operated NF, the State provides notification in accordance with 42 CFR 488.402(f).

(i) The notice (except for civil money penalties and State monitoring) specifies the:

- (1) nature of noncompliance,
- (2) which remedy is imposed,
- (3) effective date of the remedy, and
- (4) right to appeal the determination leading to the remedy.

42 CFR  
§488.434

(ii) The notice for civil money penalties is in writing and contains the information specified in 42 CFR 488.434.

42 CFR  
§488.402(f)(2)

(iii) Except for civil money penalties and State monitoring, notice is given at least 2 calendar days before the effective date of the enforcement remedy for immediate jeopardy situations and at least 15 calendar days before the effective date of the enforcement remedy when immediate jeopardy does not exist.

42 CFR  
§488.456(c)(d)

(iv) Notification of termination is given to the facility and to the public at least 2 calendar days before the remedy's effective date if the noncompliance constitutes immediate jeopardy and at least 15 calendar days before the remedy's effective date if the noncompliance does not constitute immediate jeopardy. The State must terminate the provider agreement of an NF in accordance with procedures in parts 431 and 442.

(b) Factors to be Considered in Selecting Remedies

42 CFR  
§488.488.404(b)(1)

(i) In determining the seriousness of deficiencies, the State considers the factors specified in 42 CFR 488.404(b)(1) & (2).

— The State considers additional factors. Attachment 4.35-A describes the State's other factors.

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§488.410

- (i) If there is immediate jeopardy to resident health or safety, the State terminates the NF's provider agreement within 23 calendar days from the date of the last survey or immediately imposes temporary management to remove the threat within 23 days.

42 CFR  
§488.417(b)  
§1919(h)(2)(C)  
of the Act.

- (ii) The State imposes the denial of payment (or its approved alternative) with respect to any individual admitted to an NF that has not come into substantial compliance within 3 months after the last day of the survey.

42 CFR  
§488.414  
§1919(h)(2)(D)  
of the Act.

- (iii) The State imposes the denial of payment for new admissions remedy as specified in §488.417 (or its approved alternative) and a State monitor as specified at §488.422, when a facility has been found to have provided substandard quality of care on the last three consecutive standard surveys.

42 CFR  
§488.408  
§1919(h)(2)(A)  
of the Act.

- (iv) The State follows the criteria specified at 42 CFR §488.408(c)(2), §488.408(d)(2), and §488.408(e)(2), when it imposes remedies in place of or in addition to termination.

42 CFR  
§488.412(a)

- (v) When immediate jeopardy does not exist, the State terminates an NF's provider agreement no later than 6 months from the finding of noncompliance, if the conditions of 42 CFR 488.412(a) are not met.

(d) Available Remedies42 CFR  
§488.406(b)  
§1919(h)(2)(A)  
of the Act.

- (i) The State has established the remedies defined in 42 CFR 488.406(b).

- X (1) Termination
- X (2) Temporary Management
- X (3) Denial of Payment for New Admissions
- X (4) Civil Money Penalties
- X (5) Transfer of Residents; Transfer of Residents with Closure of Facility
- X (6) State Monitoring

- X (7) Directed Plan of Correction

- X (8) Directed Inservice Training

Attachments 4.35-B through 4.35-J describe the criteria for applying the above remedies.

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Citation

42 CFR  
§488.406(b)  
§1919(h)(2)(B)(ii)  
of the Act.

- (ii) ☒ The State uses alternative remedies. The State has established alternative remedies that the State will impose in place of a remedy specified in 42 CFR 488.406(b).

- ☒ (1) Temporary Management  
☐ (2) Denial of Payment for New Admissions  
☐ (3) Civil Money Penalties  
☐ (4) Transfer of Residents; Transfer of Residents with Closure of Facility  
☐ (5) State Monitoring.

Attachments 4.35-B through 4.35-G describe the alternative remedies and the criteria for applying them.

42 CFR  
§488.303(b)  
1910(h)(2)(F)  
of the Act.

- (e) ☒ State Incentive Programs

- ☒ (1) Public Recognition  
☐ (2) Incentive Payments

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